UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Boralex Livemore Falls, Inc.	)	Docket Nos.	ER01-2569-005
Boralex Stratton Energy LP	)		ER98-4652-005
Boralex Ft. Fairfield LP	)		ER02-1175-004
Boralex Ashland LP	)		ER01-2568-003

NOTICE OF INTERVENTION AND COMMENTS OF THE MAINE PUBLIC UTILITIES COMMISSION

The Maine Public Utilities Commission ("MPUC"), by and through counsel, Lisa Fink, State of Maine Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, and Lisa S. Gast, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, respectfully files this Notice of Intervention and Comments in the above-captioned proceedings regarding Boralex Industries Inc.'s ("Boralex") June 29, 2007 filing ("June 29 Filing") in compliance with the triennial rate review requirements imposed by the Federal Energy Regulatory Commission ("Commission") orders in the above-captioned dockets.

I. <u>PRELIMINARY STATEMENT</u>

This Notice of Intervention and Comments is filed pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.212 and 385.214 (2006), and the Commission's July 3, 2007 Combined Notice of Filings #1, in which the Commission established July 20, 2007, as the date by which interventions and protests are to be filed.

The persons to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the Commission's official service list are designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2006):

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II. NOTICE OF INTERVENTION

Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state. *See* 35-A M.R.S.A. § 101 *et seq.* It is, therefore, a "state commission" under the Commission's regulations, 18 C.F.R. § 1.101(k) (2006). Accordingly, the MPUC hereby gives notice of its intervention pursuant to Rule 214(a)(2), 18 C.F.R. § 385.214(a)(2) (2006) and respectfully requests that the Commission recognize the MPUC as an intervener in this proceeding, with all rights attendant thereto.

III. BACKGROUND

On June 29, 2007, Boralex submitted its June 29 Filing in compliance with the triennial rate review requirement imposed by the Commission's orders in the above-captioned dockets, which granted authorizations to sell power at market-based rates to four Boralex subsidiaries that own interests in biomass-fueled qualifying small power production facilities with generation capacities in excess of 20 MW (the "Boralex Large QFs").[1] In its June 29 Filing, Boralex states that it used the Commission's interim market power screens as set forth in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 (2004) ("Interim Screen Order") as the basis for its market power analysis, and asserts that it is in compliance with the Commission's interim market power screens for potential market power.[2] Accordingly, Boralex requests that the Commission grant the Boralex Large QFs continued market-based rate authorization.[3]

Two of the four Boralex Large QFs at issue in the June 29 Filing serve northern Maine: the Boralex Ft. Fairfield and the Boralex Ashland plants. Both of these plants are the subject of long-term non-requirements sales commitments with WPS Energy Services, Inc. ("WPS" or "WPS/Integrys").[4] Under these arrangements, the total net capacity of these plants is committed to WPS/Integrys through February 28, 2009.[5] The Boralex Sherman plant, which is not the subject of Boralex's triennial filing, was closed by Boralex, without explanation, two months after Boralex purchased the plant in 2006.

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1 *See* June 29 Filing at 1.
2 *See id.*
3 *See id.*
4 *See id.* at 6. On February 21, 2007, as a result of the merger between WPS Resources Corporation and Peoples Energy Corporation, WPS Energy Services and Peoples Energy Services now use the name Integrys Energy Services. *See* www.integrysenergy.com. For purposes of these Comments, the MPUC will refer to WPS/Integrys to reflect the fact that although Boralex's contracts are with WPS Energy Services, Inc., Integrys Energy Services now holds those contracts.
5 *See id.*

A. There Are Unique Structural Issues in Northern Maine That Should Be Taken Into Account In Determining Both The Relevant Geographic Market For Market Power Analyses As Well As Whether Continued Market-Based Rate Authority Is Appropriate

1. Northern Maine Is Small and Electrically Isolated

Northern Maine is comprised of four utility service areas: Maine Public Service Company ("MPS"), an investor-owned utility, and three consumer-owned utilities- Eastern Maine Electric Cooperative ("EMEC"), Houlton Water Company ("HWC") and Van Buren Light and Power ("VBL&P"). Northern Maine is characterized by low population density and low electricity demand relative to other electricity markets; the maximum peak demand in the area is approximately 140 MW.[6]

The northern Maine electricity system is both geographically and electrically isolated; the northern Maine area has no direct connection to a liquid market. Northern Maine is not directly connected to the New England transmission grid, and is not part of the ISO-NE. The northern Maine area is connected to New Brunswick, Canada ("NB"); however, New Brunswick does not yet have a competitive market. Power can flow between northern Maine and New England through the New Brunswick transmission system. However, such transactions (1) may not be "firm" and (2) include significant transmission charges.

The total transfer capability between MPS and NB (through three transmission interconnections) is about 200 MW, of which about 100 MW is considered "firm." The total transfer capability between the EMEC system and NB is 15 MW (firm) for both imports and exports.

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6 Notice of Intervention and Protest of the MPUC, Docket No. ER07-744-000, May 4, 2007 at Attachment B, Huntington Affidavit at P 4. The Huntington Affidavit is attached for the Commission's convenience as Attachment A.

There is currently one transmission connection between NB and the ISO-NE area (referred to as the Maine Electric Power Company, or "MEPCO" line). The current transfer capability between NB and ISO-NE is 700 MW north-to-south and approximately 300 MW south-to-north, although of the 300 MW of south-to-north transfer capability, only 100-150 MW is considered "firm," and even that amount is only considered "conditional firm."

A new interconnection is being constructed between NB and New England (referred to as the Northeast Reliability Interconnect or "NRI" line). The NRI line is expected to be in service by the end of 2007 and is expected to increase the total transfer capability between NB and New England to 1000 MW north-to-south, and approximately 300 MW south-to-north (with most of this capability becoming "firm" as opposed to "conditional firm"). While this line will increase transfer capability between the New England and the New Brunswick control areas, it does not provide a direct connection between Northern Maine and New England.

2. The Market Structure in Northern Maine

Market participants that serve customers of the four northern Maine utilities, including all retail competitive and standard offer service suppliers, are subject to the Northern Maine Independent System Administrator ("NMISA") market rules and tariffs. MPS is the "Area Operator."

Under the NMISA market rules and tariffs, bilateral arrangements are used for supply; there is no spot market. Although the northern Maine region has been open to wholesale and retail competition for several years, except for a period immediately after the markets opened, there has been only a single retail supplier, WPS/Integrys, in the northern Maine market. Efforts to interest other suppliers in the market have failed, because (based on anecdotal information) (1) the northern Maine market is too small and too isolated (physically and institutionally) from other functioning and liquid markets, *e.g.* ISO-NE; (2) NMISA has unique market rules; (3) there are seams issues that make entrance to the market prohibitive; and (4) the lack of access to in-region supply makes entrance to the market prohibitive.

Approximately 65% of load in northern Maine is served pursuant to the MPUC's standard offer service, which is the default service procured by the MPUC. For the last several years, WPS/Integrys has been the sole retail and standard offer service provider to all customers in northern Maine, and has recently been the only retail bidder for the MPUC's standard offer service.

3. There Are Only "Two" Players In Northern Maine With Respect To Generation, And Only One Transmission Line Out

With respect to generation, with the exception of a recently-added wind facility, 100% of in-region generation is owned and controlled by "two" players: Boralex and WPS/Integrys. The in-region generation units are as follows:

Owner	Facility	Capacity/Fuel	Output "owner"
Boralex	Fort Fairfield	33 MW/Biomass	WPS/Integrys
Boralex	Ashland	37 MW/Biomass	WPS/Integrys
Boralex	Sherman	19 MW/Biomass	not operating
WPS/Integrys	Tinker Station	35 MW/Hydro	WPS/Integrys
WPS/Integrys	Caribou Steam	23 MW/Oil	WPS/Integrys
UPC	Mars Hill	42 MW/Wind	information unavailable[7]

7 Information about the disposition of the capacity and energy from this unit is unavailable to the MPUC.

Although there are three "owners" of generation in northern Maine, as shown above, WPS/Integrys has contractual entitlements to the output from all of the plants except the new wind facility. WPS/Integrys has contractual rights to the output of the two Boralex Large QFs that are the subject of Boralex's July 29 Filing, Boralex Fort Fairfield and Ashland, as well as the output from its own Tinker Station. Additionally, WPS/Integrys uses Caribou Steam, a recently-reactivated peaking plant, as a capacity resource. Boralex purchased the Sherman plant in 2006 and shut down the plant shortly after the purchase.

With respect to transmission, WPS/Integrys currently holds all or a portion of the transmission capacity into northern Maine: the transmission capacity reservation on MEPCO south-to-north out of New England and into northern Maine. Although additional transmission capacity from ISO-NE to NB will become available when the NRI line is in service, it is unclear whether any of this will be available to other suppliers to serve load in northern Maine.

B. The MPUC's Recent Experiences With Boralex and WPS/Integrys

The MPUC's recent experiences with Boralex and WPS/Integrys should also be taken into account when analyzing Boralex's June 29 Filing to determine whether continued market-based rate authority for the Boralex Large QFs that serve northern Maine is appropriate. First, the MPUC's experience with its September 2006 Standard Offer Service RFP should be factored into the Commission's market power analysis. Second, Boralex's comments in response to the MPUC's request for comments in MPUC Docket No. 2006-513 are also relevant to the Commission's analysis.

1. The MPUC's September 2006 Standard Offer Service RFP

In the summer of 2006, WPS/Integrys and Boralex initiated a joint meeting with the MPUC, during which WPS/Integrys and Boralex inquired as to the MPUC's sensitivity to prices and price increases with respect to the Standard Offer Service RFP which was going to be issued in September of 2006.

As expected, on September 15, 2006, the MPUC issued its RFP to provide standard offer service to all customer classes in the MPS territory. The RFP sought bids of 26 months and 50 months for the residential and small commercial class, and bids of 14 months for the medium and large classes. As required by the RFP, indicative bids were provided on October 5, 2006. After a review of bids and discussion on non-price terms, the Commission asked that binding bids be submitted on November 14, 2006.[8]

During its deliberations on November 14, 2006, the MPUC rejected the bids, stating that the solicitation process produced two bids from a single bidder, WPS/Integrys (a 26 month bid and a 10 year bid).[9] In its Order rejecting the bids, the MPUC explained:

> Participation by a single bidder is contradictory to the basic premise of the standard offer solicitation process. The process is intended to provide the benefits of competition for those customers who do not or can not obtain electricity supply directly from the competitive market. A solicitation process that yields only one bidder cannot be considered competitive and frustrates the purposes of the standard offer process. In addition, the lack of competing bids makes it extremely difficult to determine whether the prices are reasonable and in the public interest. It is for these reasons that we reject the bids and terminate our solicitation process.[10]

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8 *See Order Granting Reconsideration and Designating Standard Offer Provider*, MPUC Docket No. 2006-513 (December 18, 2006) (Attached as Attachment B).

9 The WPS/Integrys bid relied on power from the Boralex plants at issue in the June 29 Filing, and reflected opportunity cost rather than cost-of-service.

10 *Order Granting Reconsideration and Designating Standard Offer Provider*,

Consistent with the process in the MPUC's standard offer rule, Ch. 301, § 7(D)(2), the MPUC directed MPS to procure standard offer through wholesale arrangements and to provide standard offer service to its customers for a 14-month period beginning January 1, 2007.[11] MPS was unable to obtain supply offers from WPS/Integrys-owned generation, and although MPS did obtain a supply offer from Boralex, provisions in the existing contract between Boralex and WPS/Integrys raised questions about the availability of the Boralex generation to MPS.

On December 4, 2006, WPS/Integrys filed a petition for reconsideration, arguing that the process was sufficiently competitive and the rejection of the bids may lead to higher rates for customers. WPS/Integrys urged the Commission to reconsider its Order and award standard offer supply based on the retail bids it received.[12]

On December 18, 2006, the MPUC granted the petition for reconsideration of WPS/Integrys, reopened the bid process that was terminated on November 16, 2006, and designated WPS/Integrys as the standard offer provider for all customer classes in the MPS service territory for the 26 month period beginning January 1, 2007. In doing so, the MPUC found that if MPS provided standard offer service, prices would be considerably higher. It also noted that "WPS lowered its retail bid somewhat on reconsideration."[13] The MPUC also reiterated its conclusion that ". . . the northern Maine

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MPUC Docket No. 2006-513 (December 18, 2006) at 1-2, citing *Order Rejecting Standard Offer Bids And Directing MPS To Provide Standard Offer Service,* MPUC Docket No. 2006-513 (Nov. 16, 2006). *See id.* at 3. ("Our view is that the northern Maine market, as currently constructed, is too small and isolated to support a competitive market.")

11 *See id* at 2. The MPUC also initiated an inquiry to consider possible long-term solutions to the lack of competition in northern Maine.

12 *See id.*

13 *See id.* at 3.

market, as currently constructed, is too small and isolated to support a competitive market."[14]

2. Boralex's Response To The MPUC's Request for Comments

On June 6, 2007, the MPUC convened a meeting of the northern Maine stakeholders, the purpose of which was to discuss the progress of stakeholders in addressing the issue of lack of competition in northern Maine, since the MPUC was searching for appropriate means to promote competition that would benefit consumers, including the development of new generation and transmission infrastructure in the region.[15]

On June 18, 2007, the MPUC issued its formal Request for Comment in MPUC Docket No. 2006-513, captioned the "Standard Offer Bidding Procedure and Inquiry into Northern Maine Markets." In its Request for Comments, the MPUC outlined options to address the competitive issues in the region, and posing specific questions on potential long and short term solutions.

With respect to longer-term solutions, the MPUC's Request for Comments noted that a transmission line that links northern Maine with the rest of New England appears to be the most straight-forward means to create a liquid market in northern Maine, but questioned whether the cost of such a line would be worth the benefits and to what extent in-region generators would contribute to these costs. Other questions with respect to construction of a transmission line linking northern Maine with the rest of New England included concerns that a transmission link would result in price convergence between the

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14 *See id.*

15 *Request for Comment*, MPUC Docket No. 2006-513 (June 18, 2007) at 1. (Attached as Attachment C).

regions that would result in price increases to northern Maine customers, and concerns that if the line is rolled into the ISO-NE regional tariff, customers of CMP and BHE (the MPUC noted that it does not appear prudent at this time for MPS to join ISO-NE) would pay for a portion of the line without necessarily sharing in its benefits.[16]

With respect to interim solutions, and assuming that a transmission line is the most promising longer-term solution, such a line could not feasibly be constructed in the near term. Thus, noted the MPUC, there will be a gap between the end of the current standard offer arrangements (early 2009 for MPS and VBLP and early 2008 for HWC and EMEC) and the in-service date of any new transmission line, and thus, some interim action may be necessary. The MPUC suggested that such action could include: (1) a transmission reservation through the New Brunswick system acquired through the open season process, in the range of 5 years; (2) a standard offer or other contractual arrangement with a term in the range of 5 years that provides a price benefit to consumers; or (3) cost-based regulation in the northern Maine region for the interim period.[17]

On June 29, 2007, Boralex filed comments in response to the MPUC's June 18, 2007 Request for Comment in MPUC Docket No. 2006-513. In its comments, Boralex commented not only on the longer-term solutions posed by the MPUC, but on the interim solutions as well.

With respect to the MPUC's suggestion that cost-based regulation in northern Maine might be needed in the interim period, Boralex stated that:

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16 *See id.* at 1-2.

17 *See id.* at 2.

> Without providing extended state/federal jurisdictional analysis here, we point out the generally understood division between federal regulation of wholesale power markets and state regulation of retail power markets. Given this division, any direct regulation of the wholesale power sales rates from the Boralex Projects would fall within the regulatory authority of the Federal Energy Regulatory Commission ("FERC"). Boralex Ashland and Boralex Fairfield currently sell their electric output pursuant to market-based rate tariffs on file with FERC, and FERC retains authority to review those sales to ensure that they meet the "just and reasonable" standard of the Federal Power Act. As part of its oversight of wholesale power markets, FERC will review allegations of market power and prescribe mitigation measures as necessary, although it typically welcomes voluntary measures acceptable to local parties. FERC would need to be informed of, and formally accept, any voluntary cost-of-service arrangements worked out by Boralex and other Maine parties to ensure consistency with Boralex's market-based rate tariffs and the Federal Power Act.[18]

Boralex continued by stating that despite Boralex's belief that its triennial filing with the Commission (FERC) demonstrates that it does not possess market power within the relevant market:

> Boralex is willing to consider interim cost-of-service arrangements based on FERC's default rates. Boralex could make those arrangements available for the Boralex Sherman plant upon prior notice sufficient to allow a plant restart, while such arrangements for Boralex Ashland and Boralex Ft. Fairfield would be available upon termination of their current power sales arrangements in February 2009.
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> * * *
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> While any such cost-of-service arrangements would be based on FERC's methodologies, we believe that FERC would welcome assistance in considering rates for a biomass-fueled power plant, with its non-commodity fuel and somewhat unique operating characteristics. Thus, we would propose an open-book accounting approach that fully enables interested parties to understand the Boralex plant cost structure, protect Maine parties from any unreasonable affiliate arrangements, provide biomass fuel procurement oversight, and readily review maintenance and repair budgets.

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18 June 29, 2007 Boralex Comments, MPUC Docket No. 2006-513, at 3. (Attached as Attachment D).

> We believe that this solution offers the best bridge to the completion of the transmission line.[19]

IV. COMMENTS

Boralex's June 29 Filing, without further examination, does not contain sufficient information for the Commission to make findings that would support an order granting Boralex's petition to retain market based rates. Moreover, there are plausible versions of the screen analyses under which Boralex would fail both the Pivotal Supplier and the Wholesale Market Share tests. As discussed above, there are unique structural issues in northern Maine that should be taken into consideration; first, in determining the relevant geographic market, and second, when determining whether Boralex has market power in that relevant geographic market. Also, as discussed above, the MPUC has had some recent experiences with Boralex and the purchaser of the output from the Boralex Large QFs in northern Maine, WPS/Integrys, with respect to the MPUC's standard offer service request for proposals ("RFP"), which also should be taken into account in assessing whether Boralex has generation market power in northern Maine. Moreover, Boralex has made certain statements (and offers) in MPUC Docket No. 2006-513 which should factor into the analysis. Lastly, the changes to the Commission's market power analysis policy adopted in Order No. 697, Final Rule, *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Docket No. RM04-7-000 (June 21, 2007) ("New Market Rules") also should be considered in determining whether continued market-based rate authorization for the two Boralex Large QFs that serve northern Maine is appropriate.

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19 *Id.* at 4.

A. The Boralex Filing Requires Further Scrutiny To Determine Whether Boralex Should Retain Its Market Based Rate Authority

1. Northern Maine rather than the Maritime Control Area is the relevant market

As noted by Boralex in its June 29 Filing, the Interim Screen Order defines the relevant generation market as the control area market.[20] However, the Interim Screen Order acknowledges that "defining the relevant geographic market on a control area-by-control area basis may not be appropriate in all circumstances . . ." and therefore allows, on a case-by-case basis, "applicants and intervenors to present additional sensitivity runs as part of their market power studies to show that some other geographic market should be considered as the relevant market in a particular case."[21] The Boralex Large QFs that serve northern Maine are located within the Northern Maine area, which is an integrated part of the Northeast Power Coordinating Council's Maritime Control Area ("MCA").[22] In the June 29 Filing, Boralex asserts that the Maritime Control Area constitutes the appropriate "control area" for purposes of the Interim Screen Order's application to the Boralex Large QFs located within the NMISA.[23] However, noting that the MPUC might assert that northern Maine, rather than the MCA, is the appropriate market for examining the combined wholesale market power of the Boralex affiliates, Boralex has provided, in its June 29 Filing, screen calculations for the Northern Maine sub-region on a stand-alone basis.[24]

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20 *See* June 29 Filing at 5.
21 Interim Screen Order at P 75.
22 *See* June 29 Filing at 4.
23 *See id.* at 5.
24 *See id.* at 6.

The Northern Maine area is the appropriate market for examination of whether there are market power concerns that must be examined in determining whether to extend Boralex's market based rate authorization for its QFs that serve Northern Maine for all the reasons discussed above--northern Maine is small and electrically isolated, suppliers in northern Maine are subject to the market rules and tariffs of NMISA, and there are only "two" players in northern Maine that control essentially all the generation and transmission. Further, because competition has not fully developed in the New Brunswick area, competitive supply out of New Brunswick at this time is not a viable option. Indeed, the dominance of a single supplier in the New Brunswick region poses an additional obstacle to competition in Northern Maine. For all of these reasons, Northern Maine, and not the MCA, is the appropriate "control area" for purposes of applying either the Interim Screen Order or the New Market Rules to the Boralex plants.

2. Passing The Screens Establishes A Rebuttable Presumption Which May Be Overcome With The Submission Of Additional Evidence By Intervenors

As noted above, Boralex's June 29 Filing uses the Commission's interim market power screens as set forth in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 (2004) ("Interim Screen Order") as the basis for its market power analysis. Boralex notes that although the Commission has new regulations adopted in Order No. 697, Final Rule, *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Docket No. RM04-7-000 (June 21, 2007) ("New Market Rules"), Boralex states that "[a]s the New Market Rules will not become effective for at least 60 days, Boralex remains subject to existing FERC requirements."[25]

[25] June 29 Filing at 1, fn. 1.

In the Interim Screen Order, the Commission states that:

> If an applicant passes both screens, there will be a rebuttable presumption that the applicant does not possess market power in generation. However, we will allow intervenors to present evidence to rebut the presumption under these circumstances. For example, intervenors could present evidence based on historical wholesale sales data and/or challenge our assumption that competing suppliers inside a control area have access to the market (such a challenge could take into account both the actual historical transmission usage at the time of the study as well as the amount of available transmission capacity at that time).[26]

Given the limited information contained in the June 29 Filing as well as the additional information provided herein, the market power screens set forth in the Interim Screen Order are insufficient to determine whether continued market-based rate authority is appropriate for those units serving northern Maine. Even if Boralex passes both screens of the Interim Screen Order, there may be evidence to rebut the presumption that Boralex does not possess market power in generation. As explained above:

- WPS/Integrys has 100% of the retail market share, and has for several years. WPS/Integrys owns or controls all of the in-region generation and currently holds the transmission capacity reservation on MEPCO south-to-north out of New England and into northern Maine and the Boralex Large QFs comprise a substantial component of WPS/Ingegrys's supply portfolio.
- In the middle of 2006, WPS/Integrys and Boralex met with the MPUC to inquire about sensitivity to prices with respect to the upcoming standard offer service RFP.
- The WPS/Integrys bid in response to the MPUC's standard offer service RFP relied on output from the Boralex Large QFs that serve northern Maine.

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26 Interim Screen Order at P 37.

- The WPS/Integrys-Boralex supply contract has a provision which restricts sales to other entities.
- The WPS/Integrys bid and its underlying wholesale supply portfolio, including Boralex's QFs, in response to the MPUC's standard offer service RFP appears to reflect opportunity cost rather than cost-of-service.
- Boralex purchased the Sherman plant in 2006 and closed it, without explanation, within two months of the purchase.

Further, the MPUC has found that the Northern Maine retail market is not competitive. Based on this evidence and additional information that may be acquired through a technical conference, the MPUC requests that the Commission examine whether the lack of retail competition in Northern Maine mirrors a lack of wholesale competition in Northern Maine.

The Commission stated in the Interim Screen Order:

> Where there is a competitive market, the Commission may rely on market-based rates in lieu of cost-of-service regulation to ensure that rates satisfy this requirement. Fn. 136. Consistent with our precedent, the Commission authorizes sales of electric energy at market-based rates only if the seller and its affiliates do not have, or have adequately mitigated, market power in the generation and transmission of such energy, and cannot erect other barriers to entry by potential competitors. Fn. 137. Thus, where a market-based rate applicant is found to have market power (e.g., after reviewing an applicant's Delivered Price Test), it is incumbent upon the Commission either to reject such rates or to ensure that adequate mitigation measures are in place to ensure that the rates are just and reasonable.[27]

Here, the Commission should examine whether or not there is a competitive market in Northern Maine as it considers whether Boralex should retain its market based rate authority. Similarly, under the new rule, the Commission may consider, on a case-

[27] Interim Screen Order P 144 (internal citations omitted).

by-case basis, that certain circumstances such as the existence of barriers to entry, beyond the seller's control, as well as actions by competitors such as retirement of generation, affect the seller's ability to exercise market power.[28]

3. Under The New Market Rules, Which Should Be Applied As A Secondary Test Of Boralex's Ability To Wield Market Power In Northern Maine, "Extraordinary Circumstances" Exist to Disallow Deduction of Boralex's Generation Currently under Contract to WPS/Integrys

Boralex states that its June 29 Filing is based on the Interim Screen Order because the New Market Rules are not yet effective, and explains that even if the New Market Rules were in effect, "given the relatively small amount of capacity controlled by Boralex, the new Commission market screen procedures would very likely produce similar conclusions to those set forth herein."[29]

Since the June 29 Filing was made on the cusp of the New Market Rules going into effect, and the June 29 Filing is a triennial filing which requests market-based rate authority be extended long into the time period when the New Market Rules will be in effect, it is appropriate to have Boralex re-run its market screen analysis using the market screen procedures set forth in the New Market Rules to ensure that granting Boralex market-based rate authority for the next three years is appropriate. As discussed below, such an examination may well result in different conclusions than those set forth in the June 29 Filing as asserted by Boralex.

Prior to the Interim Screen Order, the Commission used the Supply Margin Assessment Test ("SMA") to determine whether an entity had an ability to exercise generation market power and whether that entity should be granted the authority to sell at

28 *See* New Market Rules at P 1035 (discussing triggering events).

29 June 29 Filing at 4, fn. 6.

market-based rates.[30] In the SMA calculations, the Commission took into account all generation capacity a supplier owned or controlled, irrespective of whether that capacity was already committed to serve native load or was the subject of long-term firm commitments.[31]

In the Interim Screen Order, the Commission recognized that in including all capacity an applicant for market-based rates owned or controlled, the SMA overstated the applicant's generation capacity available to serve the wholesale market, since it is an entity's share of uncommitted capacity available that is a general indication of its ability to dominate firm sales in the short-term market.[32] Therefore, in the Interim Screen Order, the Commission held that sellers may deduct generation associated with their operating reserves, native load commitments and long-term firm non-requirements sales in determining "uncommitted capacity," and that this "uncommitted capacity," rather than total capacity, would be used in the calculation of both the pivotal screen and market share analyses.[33]

Under the New Market Rules, the concept of "uncommitted capacity" remains, and sellers may still deduct generation associated with their long-term firm requirements sales, "unless the Commission disallows such deductions based on extraordinary circumstances."[34] The MPUC suggests that the reasons the Commission decided to permit entities to net out long-term firm non-requirements sales, namely, that capacity already committed could not be used to dominate the market, do not apply in the case of

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30 *See* Interim Screen Order at PP 8-12.

31 *See id.*

32 *See id.* at PP 85, 89.

33 *See id.* at P 95.

34 New Market Rules at P 38, fn. 18.

northern Maine. Further, the contract between Boralex and WPS/Integrys expires at the end of February 2009. Thus, the so-called "long-term" commitment is for a relatively short period of time—approximately a year and a half. The MPUC believes that the evidence provided above with respect to the unique structural issues in northern Maine, the MPUC's recent experiences with Boralex and WPS/Integrys, and the factual statements made by Boralex in MPUC Docket No. 2006-513 described in detail above, result in such "extraordinary circumstances" in northern Maine as to warrant further examination.

The MPUC requests that in order to make a full examination of Boralex's request for continued market-based rate authorization, the Commission analyze the market power using the screens set forth in the New Market Rules, and excluding capacity contracted to WPS/Integrys in northern Maine due to these "extraordinary circumstances." The MPUC has provided this analysis as summarized below.[35]

4. Boralex Fails The Generation Market Screen When Committed Capacity Is Not Deducted

As shown below, when committed capacity is not deducted from the analyses, Boralex would fail the generation market share screen.

[35] The backup for the tables is provided as Attachment E.

Wholesale Market Share Analysis

NMISA Region Basis; Committed Capacity Not Deducted

	Q1 MW	Q2 MW	Q3 MW	Q4 MW
Total competing supply	183.7	183.7	183.7	183.7
Applicant's uncommitted capacity	89.0	89.0	89.0	89.0
Total uncommitted capacity	272.7	272.7	272.7	272.7
Applicant's market share	32.6%	32.6%	32.6%	32.6%

If Applicants market share < 20% , Applicant passes
If Applicants market share >= 20% , Applicant fails

RESULT ---->>> Applicant FAILS

Pivotal Supplier Analysis

NMISA Region Basis; Committed Capacity Not Deducted

	MW
Net uncommitted supply (P)	132.7
Applicant's uncommitted capacity (Q)	89.0

If Q < = P, Applicant passes
If Q > P, Applicant fails

RESULT ---->>> Applicant PASSES

The failure to pass the market generation screen provides sufficient indicia of a problem to warrant further investigation.

5. The New Market Rules Appear To Require Consideration of Remote Generation in the Screen Analyses

Under the New Market Rules, the seller is directed to include in the seller's total uncommitted capacity amounts "[u]ncommitted capacity from a seller's remote generation (generation located in an adjoining balancing authority area)."[36] Boralex's filing shows that it owns capacity in the ISO-NE balancing authority area and does not indicate that the energy and capacity from these units is committed. In particular, Boralex owns two facilities in southern Maine – Boralex Stratton and Livermore Falls – with a combined installed capacity of 90 MW, of which 85 MW is uncommitted capacity.[37] This generation could be imported into the Northern Maine sub-region through New Brunswick. Thus, the rules appear to require Boralex to include the ISO-NE units in its screen analyses.

6. Boralex fails both screens when its remote capacity is considered

Boralex omitted the importable capacity it owns in an adjoining balancing authority area, ISO-NE from its screen analysis for its two Northern Maine units ("Remote Capacity"). If Remote Capacity is properly considered in the screen analyses, transmission import capability would first be allocated to the Applicant's uncommitted Remote Capacity, in this case the 85 MW from Boralex Stratton and Livermore. Any remaining transmission import capability would then be allocated to competing suppliers.

The MPUC has revised the Boralex Pivotal Supplier and Wholesale Market Share analyses (NMISA Only version) to reflect Remote Capacity.[38] With this revision, Boralex fails both market power screens by a wide margin.

The Wholesale Market Share screen, which tests whether the Applicant has a dominant position by estimating the Applicant's share of uncommitted capacity, is summarized below:

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36 New Market Rules at P 38.
37 June 29 Filing at Attachment 2.
38 *See* Attachment E.

Wholesale Market Share Analysis
NMISA Region Basis; Remote Capacity Included

	Q1 MW	Q2 MW	Q3 MW	Q4 MW
Total competing supply	98.7	98.7	98.7	98.7
Applicant's uncommitted capacity	109.0	109.0	109.0	109.0
Total uncommitted capacity	207.7	207.7	207.7	207.7
Applicant's market share	52.5%	52.5%	52.5%	52.5%

If Applicants market share < 20% , Applicant passes
If Applicants market share >= 20% , Applicant fails

RESULT ---->>> Applicant FAILS

The Pivotal Supplier screen, which tests whether market demand can be met without the Applicant's uncommitted capacity, is summarized below:

Pivotal Supplier Analysis
NMISA Region Basis; Remote Capacity Included

	MW
Net uncommitted supply (P)	67.7
Applicant's uncommitted capacity (Q)	109.0

If Q < = P, Applicant passes
If Q > P, Applicant fails

RESULT ---->>> Applicant FAILS

B. Request for Technical Conference

Based on the foregoing, it is clear that there is insufficient analysis contained in the June 29 Filing to grant the Boralex Large QFs that serve northern Maine continued market-based rate authorization without further inquiry. To ensure that granting Boralex continued market-based rate authorization for the Boralex Large QFs that serve northern

Maine is appropriate, the MPUC respectfully requests that the Commission (1) examine the issues raised herein, (2) require Boralex to provide an explanation for its decision to close the Sherman plant, and (3) convene a technical conference in this case.

With respect to a technical conference, the MPUC requests that the Commission require not only that the appropriate representatives from Boralex be required to attend, but that appropriate representatives from WPS/Integrys be required to attend as well. As Boralex and WPS/Integrys are the only suppliers in the northern Maine region, it is imperative to have both suppliers available to address possible market concerns that may affect a determination of whether Boralex should retain its market based rate authority. The Commission has the requisite authority, pursuant to both Boralex's and WPS/Integrys's market-based rate authorization, to require such attendance. The MPUC further requests that the Technical Conference be held during the week of August 20, 2007.

V. CONCLUSION

WHEREFORE, the Maine Public Utilities Commission respectfully requests that the Commission grant the relief requested hereinabove.

Dated: July 20, 2007

Respectfully submitted,

/s/ Lisa S. Gast
Lisa S. Gast
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& Pembroke, P.C.
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Lisa Fink
State of Maine
Public Utilities Commission
242 State Street
18 State House Station
Augusta, ME 04333-0018

Counsel for the Maine Public
Utilities Commission

ATTACHMENT A

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Northern Maine Independent Service Administrator, Inc.	))	**Docket No. ER07-744-000**

I, Faith Huntington, having been duly sworn, do hereby depose and say as follows:

1. My name is Faith Huntington and I am the Director of the Technical Analysis Division of the Maine Public Utilities Commission ("Maine PUC"). My responsibilities include advising the Maine PUC Commissioners on electricity matters, including energy and capacity markets and conducting standard offer solicitations.

2. The information contained in this affidavit is based on my personal knowledge or is based on records of the Maine PUC. Where based on Maine PUC records, the records were made at or near the time of the event by a person with knowledge and maintained by the Maine PUC in the regular course of business.

3. The proposed market rules and tariffs filed by the Northern Maine Independent System Administrator (NMISA) on April 13, 2007 will result in a substantial increase in electricity prices to Maine consumers by imposing a new and excessive capacity obligation on retail suppliers. These proposed changes could increase electricity prices for the vast majority of consumers in the northern Maine region by as much as $6.00/MWh.

4. There are four Maine transmission and distribution utilities within the NMISA region: Maine Public Service Company (MPS), an investor-owned utility, and three consumer-owned utilities - Eastern Maine Electric Cooperative; Houlton Water Company and Van Buren Light and Power Company. In the aggregate, the peak load of customers in the NMISA region is about 140 MW.

5. Maine adopted electric restructuring effective March 1, 2000 and, since that date, all consumers receive electric energy and capacity from retail competitive suppliers or retail standard offer suppliers.

6. Market participants that serve customers of the four northern Maine utilities, including all retail competitive and standard offer suppliers, are subject to the NMISA market rules and tariffs.

7. By Maine law (35-A M.R.S.A. §3212), standard offer service is the only default electricity supply service and the Maine PUC conducts the standard offer bid process and selects the winning supplier(s) of standard offer service. The standard offer price is determined by the winning bid(s) the Maine PUC selects, and the winning bidders provide retail service to consumers

8. More than 60% of the load in the northern Maine region is currently supplied by standard offer service.

9. On September 15, 2006 the Maine PUC issued a request for proposals for electric standard offer service for all classes of customers in the service territory of Maine Public Service Company (MPS).

10. Subsequent to the RFP release, Maine PUC staff was contacted by WPS Energy Services, Inc. (WPS) – the only retail supplier serving load in northern Maine and the only retail respondent to the RFP. [1] WPS raised concerns about uncertainty with respect to its capacity-related obligations, including a potential change to NMISA market rules and tariffs that would require suppliers to meet load obligations with capacity in addition to Balanced Schedule Energy. This uncertainty made it difficult for WPS to submit firm standard offer price bids or, in the alternative, could lead to unnecessarily high standard offer price bids if "worst case" assumptions were reflected in bid prices. To accommodate this uncertainty, which was unlikely to be resolved before the standard offer bid deadline, WPS and the Maine PUC staff negotiated a set of "Bidder Conditions" (*See attached Bidder Conditions*). Part (C) of the Bidder Conditions would allow for adjustments to standard offer prices contingent upon certain changes to NMISA market rules and tariffs that would require WPS to meet its standard offer load obligations with capacity in addition to Balanced Schedule Energy. These Bidder Conditions were included in the final WPS standard offer proposal submitted to the Maine PUC.

11. On December 18, 2006 the Maine PUC designated WPS as the standard offer provider for all customer classes in the Maine Public Service Company (MPS) service territory for the 26 month period beginning January 1, 2007. (*See attached Order)* In doing so, the Maine PUC accepted WPS's Bidder Conditions, including the contingent adjustments to standard offer prices for changes to NMISA market rule and tariff requirements for capacity. Acceptance of these Bidder Conditions represented an exception to Maine PUC policy and practice which, until this point, had not allowed contingencies or conditions that were dependent on such market rule changes.

12. At about this same time, Van Buren Light and Power (VBLP) accepted a similar proposal for standard offer service for its customers from WPS.

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[1] A subsequent acquisition of Peoples Energy Group by WPS's parent created a new company, Integrys Energy Group, which includes this WPS affiliate.

13. The electricity load of MPS customers is about 550 thousand MWh annually, of which about 350 thousand MWh receives standard offer. The load of VBLP is about 13 thousand MWh annually, virtually all of which receives standard offer service.

14. The proposed market rules and tariffs filed by the NMISA on April 13, 2007 directly implicate part (C) of the WPS Bidder Conditions and could result in an immediate and substantial increase in standard offer prices paid by MPS and VBLP customers. The increase could be as much as \$6.00/MWh - a 7.6% increase over current residential standard offer prices. Over the 26 month term of the WPS standard offer, the increase could exceed \$3.5 million.

15. On April 27, 2007, WPS (now Integrys Energy Services) filed a Petition with the Maine PUC seeking to adjust standard offer prices in accordance with its Bidder Conditions. (*See attached Petition.*) In its Petition, Integrys states that the effect of NMISA's April 13, 2006 FERC filing is to impose a capacity requirement that would require Integrys to purchase enough capacity to replace its single largest generation resource. Integrys further states that NMISA's filing and related actions implicate its Bidder Condition C(3), which could allow for a standard offer price increase of up to \$6.00/MWh.

Dated at Augusta, Maine this 4th day of May, 2007.

By Faith Huntington
Faith Huntington

Subscribed and sworn to before me
this 4th day of May, 2007

Jennifer Paul

JENNIFER PAUL
NOTARY PUBLIC • MAINE
MY COMMISSION EXPIRES JUNE 21, 2007

ATTACHMENT B

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2006-513

December 18, 2006

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Procedure
For Customers of Maine Public Service
Company

ORDER GRANTING
RECONSIDERATION
AND DESIGNATING
STANDARD OFFER
PROVIDER

ADAMS, Chairman; REISHUS, Commissioner

I. SUMMARY

Through this Order, we grant the petitions for reconsideration of WPS Energy Services. Inc. (WPS) and Loring BioEnergy LLC (LBE), and designate WPS as the standard offer provider for all customer classes in the Maine Public Service Company (MPS) service territory for the 26 month period beginning January 1, 2007.

II. BACKGROUND

On September 15, 2006, the Commission issued a request for proposals (RFP) to provide standard offer service to all customer classes in MPS's territory. The RFP sought bids of 26 months and 50 months for the residential and small commercial class and bids of 14 months for the medium and large classes. As required by the RFP, indicative bids were provided on October 5, 2006. After a review of bids and discussion on non-price terms, the Commission asked that binding bids be submitted on November 14, 2006.

During its deliberations on November 14, 2006, the Commission rejected the bids, stating that the solicitation process produced two bids from a single bidder (a 26 month bid and a 10 year bid). In its Order rejecting the bids, the Commission explained:

> Participation by a single bidder is contradictory to the basic premise of the standard offer solicitation process. The process is intended to provide the benefits of competition for those customers who do not or can not obtain electricity supply directly from the competitive market. A solicitation process that yields only one bidder cannot be considered competitive and frustrates the purposes of the standard offer process. In addition, the lack of competing bids makes it extremely difficult to

> determine whether the prices are reasonable and in the public interest. It is for these reasons that we reject the bids and terminate our solicitation process.

Order Rejecting Standard Offer Bids And Directing MPS To Provide Standard Offer Service, Docket No. 2006-513 (Nov. 16, 2006).[1] Consistent with the process in our standard offer rule, Ch. 301, § 7(D)(2), we directed MPS to procure standard offer through wholesale arrangements and to provide standard offer service to its customers for a 14 month period beginning January 1, 2007. The Commission also initiated an Inquiry to consider possible long-term solutions to the lack of competition in northern Maine.

On December 4, 2006, WPS filed a petition for reconsideration, arguing that the process was sufficiently competitive and the rejection of the bids may lead to higher rates for customers. WPS urged the Commission to reconsider its Order and award standard offer supply based on the retail bids it received. On December 6, 2006, Loring BioEnergy LLC (LBE) filed a request for reconsideration, generally supporting the arguments and positions of WPS. In compliance with the Commission's November 16, 2006 Order, MPS, on December 15, 2006, filed its recommendations regarding standard offer wholesale supply arrangements and corresponding standard offer rates.

III. DECISION

We grant the petitions for reconsideration of WPS and LBE, reopen the bid process that was terminated on November 16, 2006, and designate WPS as the standard offer provider for all customer classes in the Maine Public Service Company (MPS) service territory for the 26 month period beginning January 1, 2007. The standard offer prices vary among the classes and change over the 26 month term. Additionally, as we discuss below, the accepted bid contains a condition that would allow for the prices to increase based on the future imposition of a capacity requirement in northern Maine (either through a market rule change or a FERC finding that current market rules impose such a condition). Attachment A contains the accepted standard offer prices, including the maximum prices that may occur as a result of the capacity requirement contingency.

As explained in our November 16th Order, we rejected the standard offer bids because of market failure in northern Maine. The participation by a single

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[1] The Commission also noted that the longer term bid was not in acceptable form even if submitted in a competitive context, because it placed significant risks (i.e. fuel price and plant efficiency) on the consumers and did not sufficiently address financial security issues. In addition, because we did not ask for long-term bids in this solicitation, there were no competing proposals, thus making it difficult to analyze.

bidder indicated that there was not enough activity to ensure that customers would receive a price that was reasonably reflective of competition. Our view is that the northern Maine market, as currently constructed, is too small and isolated to support a competitive market. It is for these reasons that we rejected the bids.

When we rejected the bids and directed MPS to supply the standard offer through wholesale arrangements, we took a risk that the prices could be higher than the rejected bid prices. The petitions for reconsideration allowed us to compare the ultimate prices consumers would pay under the retail bids with that which would result from MPS providing the service.[2] This comparison revealed that prices would be significantly higher if MPS provided standard offer service through its wholesale arrangements. In addition, WPS lowered its retail bid somewhat on reconsideration. When we rejected the bids, our intent was to commit to standard offer arrangements for a short term to provide time to consider longer term solutions. The acceptance of WPS's 26 month retail bid serves the purpose of providing a transition or a bridge to the longer term at the lowest possible cost to consumers and, it is for this reason, that we reconsider our November 16th Order and accept WPS's 26 month retail bid.

We do not consider the WPS long-term bid (ten years) because adoption of that bid would effectively preempt or short-circuit our efforts to consider all possible longer term solutions to the northern Maine market problems. By accepting the WPS short-term bid, we do not suggest in any way a view that the northern Maine market has been vindicated or that the status quo may be maintained indefinitely. In addition, our decision should not in any way be interpreted as conferring antitrust immunity on any party, or otherwise estopping any appropriate investigation and enforcement activity.

The WPS bid included bidder conditions that are contained in Attachment B to this Order.[3] We hereby accept these bidder conditions and incorporate them into this Order. As mention above, the WPS bid included a condition that would allow for a price change to reflect costs resulting from the imposition of a capacity requirement in northern Maine through a FERC finding or a market rule change. In such an event, standard offer prices would increase as determined

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[2] We acknowledge the enormous effort of MPS in putting together a portfolio of wholesale arrangements on such short notice. Consistent with Chapter 301, § 9(D), MPS may defer for later recovery all incremental costs involved in its effort to secure standard offer supply.

[3] We also attach to this Order WPS's Statement of Commitment (Attachment C) that binds WPS to the provision of standard offer service according to the terms of its bid.

by the Commission up to a capped amount stated in the bidder conditions.[4] Under the current circumstances, we find the WPS capacity requirement contingencies to be acceptable.[5] We also note that WPS did not propose any changes to standard offer provider standard service agreement and we therefore direct WPS and MPS to execute the standard agreement upon issuance of this Order.

Our request for standard offer bids and the standard contract incorporate a "margining" approach to financial security in which the amount of security to be posted by the supplier varies with market conditions and the amount of expected standard offer load. MPS has agreed to perform the margining function. We recognize that Chapter 301 does not require utilities to perform margining functions with respect to standard offer service and that such a margining function imposes additional risk on T&D utilities. We explicitly find that MPS shareholders shall not be subject to any prudency risk or financial liability with respect to its margining activities related to standard offer service for any actions it takes and decisions that it makes in the ordinary course of business of managing the margining requirements, as long as it takes reasonable steps to inform the Commission of its activities in this regard.[6] To the extent that any other person or entities seek to impose any such prudency risk or liability on MPS in contravention to the previous sentence, any resulting direct or indirect costs, obligations, expenses or damages incurred by MPS shall be fully recovered, with carrying costs, from customers either through utility rates or standard offer prices.

Similarly, we also recognize that the bidder conditions approved in this Order may create certain risks and obligations for MPS. Risks imposed by the bidder conditions are properly borne by customers and not shareholders. Therefore, we explicitly find that any direct or indirect costs, obligations, expenses or damages reasonably incurred by MPS in fulfilling its contractual obligations or exercising its contractual rights under the standard agreement, or in satisfying the bidder conditions we have accepted, shall be fully recovered,

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[4] The WPS bidder conditions included two possible types of capacity requirements: 1) installed capacity obligation; and 2) available capacity obligation. The capped prices differ depending on the type of capacity requirement that is imposed.

[5] We have generally found such contingencies not to be acceptable and have preferred that suppliers take the risk of changes in FERC jurisdictional market rules. Our decision to accept the market rule change contingencies under the circumstances of this case does not indicate a change in our general practice.

[6] The reasonable steps will include, but not be limited to, weekly e-mail communications from the MPS to Commission Staff reporting current market prices and MPS's calculation of Excess Market Exposure.

with carrying costs, from customers either through utility rates or standard offer prices.

Dated at Augusta, Maine, this 18th day of December, 2006.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Adams
Reishus

ATTACHMENT C

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2006-513

June 18, 2007

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Procedure and
Inquiry into Northern Maine Markets

REQUEST FOR
COMMENT

ADAMS, Chairman; REISHUS and VAFIADES, Commissioners

BACKGROUND

On June 6, 2007, the Commission convened a meeting of the northern Maine stakeholders. The purpose of the meeting was to discuss the progress of stakeholders in addressing the issue of lack of competition in northern Maine. The Commission is searching for appropriate means to promote competition that would benefit consumers, including the development of new generation and transmission infrastructure in the region. At the conclusion of the meeting, stakeholders were asked to respond to a written request for comments from the Commission outlining options to address the competitive issues in the region. The Commission asks stakeholders to respond to the discussion below and to provide any other comments that may lead to real solutions of the northern Maine issues. The Commission requests that comments be submitted by **June 29, 2007.**

Request for Comments

<u>Longer-term Solutions</u>

A transmission line that links northern Maine with the rest of New England appears to be the most straight-forward means to create a liquid market in northern Maine. However, there is a question as to whether the cost of such a line would be worth the benefits and to what extent in-region generators would contribute to these costs. Second, there are concerns that a transmission link would result in price convergence between the regions that would result in price increases to northern Maine customers. Finally, if the line is rolled into the ISO-NE regional tariff, customers of CMP and BHE (it does not appear prudent at this time for MPS to join the New England RTO) would pay for a portion of the line without necessarily sharing in its benefits. These concerns may be addressed through some combination of the following:

- Complete or partial funding of a transmission line by generators in the northern Maine region that will benefit from access to ISO-NE market.
- Long-term contract(s) in which existing or new generators provides a benefit to customers to offset price convergence in northern Maine and/or the cost of rolled-in transmission to CMP and BHE customers. Such contracts could take

the form of indexed contracts that would result in prices lower than the natural gas-based ISO-NE prices or contracts below expected market capacity or energy prices. Commenters may discuss whether a contract with a utility would be beneficial compared to a standard offer arrangement (recognizing that such a contract may require a change in statute).

- The formation of one or more new load zones within Maine.

Commenters should consider ways to coordinate the construction of a transmission line with use of that line by new or existing generation and other means of managing the impact of market convergence for a reasonable time.

Interim solutions

Assuming that a transmission line is the most promising longer-term solution, such a line could not feasibly be constructed in the near term. Thus, there will be a gap between the end of the current standard offer arrangements (early 2009 for MPS and VBLP and early 2008 for HWC and EMEC) and the in-service date of any new transmission line. Thus, some interim action may be necessary. Such action could include the following:

- A transmission reservation through the New Brunswick system acquired through the open season process. Such a reservation may be in the range of 5 years. Commenters are requested to discuss the benefits and detriments of such an approach, the appropriate size of the reservation, who would be the appropriate entity(ies) to purchase the reservation, and who should pay for the reservation and through what mechanism should payment occur.

- A standard offer or other contractual arrangement with a term in the range of 5 years that provides a price benefit to consumers.

- Cost-based regulation in the northern Maine region for the interim period. Commenters are requested to discuss how such interim regulation might work, including the roles of state and federal regulatory authorities.

The Commission reiterates that time is of the essence and the time for stakeholders to a fashion a solution is running out. Thus, we ask stakeholders to focus their energies on workable solutions that will be in the overall public interest.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

ATTACHMENT D

RATH YOUNG
PIGNATELLI

Jill Dinneen
jd@rathlaw.com

June 29, 2007

VIA E MAIL (Laurel.Peaslee@maine.gov)
AND U.S. POSTAL SERVICE

Karen Geraghty
Administrative Director
Public Utilities Commission
242 State Street
State House Station
Augusta, Maine 04333-0018

RE: Request for Comments, Docket No. 2006-513

Dear Ms. Geraghty,

On June 18, 2007, the Maine Public Utilities Commission invited parties in the above referenced docket to comment on the Commission's continuing efforts address competitive issues within the Northern Maine Independent System Administrator, Inc. area. Enclosed are the comments of Boralex Industries Inc., on behalf of its subsidiaries Boralex Ashland LP, Boralex Ft. Fairfield LP, and Boralex Sherman LLC.

If you have any questions, I can be reached at the above number.

Sincerely yours,

Jill Dinneen

Jill Dinneen, Esq.

cc: Curt Whittaker, Sylvain Aird
encl/

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Standard Offer Bidding Procedure and Inquiry into Northern Maine Markets	))	Docket No. 2006-513

Comments of Boralex Industries, Inc.

Introduction

On June 18, 2007, the Commission invited parties in the above referenced docket to comment on the Commission's continuing efforts address competitive issues within the Northern Maine Independent System Administrator, Inc. ("NMISA") area. Boralex Industries Inc. ("Boralex"), on behalf of its subsidiaries Boralex Ashland LP, Boralex Ft. Fairfield LP, and Boralex Sherman LLC (the "Boralex Projects") tenders the following comments.

Longer-term Solutions

As the Commission states in its request for comments, a transmission line that links northern Maine with the rest of New England is the most direct way to create a more liquid wholesale power market in northern Maine. Boralex has consistently supported the installation of such a transmission line, as it would have multiple benefits: (i) encourage new retail market participants to compete for the northern Maine customer base, (ii) allow new wholesale market participants to compete for Standard Offer and other aggregated load requests, (iii) provide a transparent mechanism for establishing competitive market-based prices, and (iv) provide an avenue for northern Maine's abundant renewable resources to compete in renewable energy markets to the south.

The Commission expresses three reservations about such a transmission line: (i) cost allocation to northern Maine consumers; (ii) potential cost allocation to CMP and BHE customers if the transmission line is rolled into the ISO-NE regional tariff; and (iii) price convergence between northern Maine and southern Maine.

Boralex cannot recommend a final cost allocation structure, or whether to roll those costs into the ISO-NE regional tariff. Those are ultimately questions for informed regulators. What we can say is that we are prepared to support the costs of a new transmission line by expending approximately the same annual amounts that the Boralex Projects currently expend to maintain their existing transmission rights over the New Brunswick Energy/MEPCO system (approximately $700,000/year).

Another issue specific to a transmission long-term solution is the sizing of the line. With respect to the potential of a large-scale transmission line, we believe that the Aroostook Wind project is a key player in this generator-led effort. They have announced plans for pursuing a new transmission link to the south as part of a very large commercial wind development in Northern Maine. It is difficult to imagine the near-term success of any generator-led solution to the costs of a large-scale transmission line without the participation, indeed leadership, of that project. At the same time, the Aroostook Wind project remains in development, and any commitment from them would be contingent on the successful financing/construction of their project.[1] Boralex has attempted to contact Linekin Bay Energy, the project's local sponsor, concerning its interest in a generator-led transmission effort, but has not had the opportunity to discuss the matter. A smaller scale line that may not involve Aroostook Wind (or may involve a reduced Aroostook Wind project) would still serve the purposes of providing the four benefits listed at the beginning of this section. Regardless of the size, Boralex is ready to participate in cost allocation discussions with Aroostook Wind, UPC Wind and other local generators under the auspices of the Commission in this docket.

Even with cost mitigation efforts on behalf of local generators and developers, it is likely that customers (in Northern Maine, ISO-NE or both) will share in the costs. Boralex does not have an answer to the calculus for what costs a customer should bear, except to simply note that of the four benefits of a transmission line, the northern Maine customer would enjoy three of them (retail price competition, wholesale price competition, and a transparent market mechanism) while the CMP/BHE customer would enjoy the fourth (additional baseload renewable energy flowing south).

In addition to cost allocation issues, the Commission cites the potential for price convergence as a problem, and expresses a desire to couple in-territory price discounts with the deeper competitive market tapped by a new transmission line. This is a difficult proposition.

A new transmission line will allow the deeper competitive market within the ISO-NE to check any wholesale market pricing power that might exist within the NMISA. But rather than allow NMISA-area generators to compete in this market, the Commission essentially asks them to help fund the means of reaching that market, and then offer price discounts within the NMISA that by necessity will keep any new competitors out of the NMISA. It appears contrary to this proceeding to dedicate time and money on a line that promotes market-based competition, and then to supplant that competition with artificially low pricing. This would serve to double-charge local generators for line access as well as to provide a strong disincentive for new competitors to enter the region..

Interim Solutions

Between now and the time a new transmission line is installed, the Commission may determine to pursue some interim actions to ensure just and reasonable wholesale rates. The Commission's suggestions include (i) a new transmission reservation on the NBSO system, (ii) a standard offer–type contractual supply arrangement that provides a "price benefit" to NMISA area customers, and (iii) cost-based regulation of local generation suppliers like Boralex.

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[1] A consultant to the Aroostook Project includes the following announcement on its website: "CLF Ventures will help ensure the success of this project by solving a key issue facing wind farm developers around the country: insufficient transmission capacity. Nation-wide, many promising wind power development site[s] are located in remote areas far from the necessary power lines that are up to the task of moving their potential energy output. Upgrading the transmission infrastructure to support the development of Aroostook Wind will make the project possible. CLF Ventures will work with a variety of government, industry and advocacy stakeholders who play key roles in the planning and financing of transmission upgrades. A successful strategy will help get clean wind power to market while upgrading and stabilizing the rural grid that connects to the turbines." See, http://www.clfventures.org/practice_wind.html.

A. Open Season Reservation on NBSO

According to documents provided at the June 6, 2007, technical conference for the NBSO open season,[2] the economic evaluation of bids will consist of selecting bids with the largest gross net present value. The price is fixed at the tariff rate, so competition among bids will be over (i) the selection of MW reserved and (ii) the length (number of months) of the reservation. Further, bidders may form a coalition to provide a larger bid, but each bid may elect only one point of receipt and one point of delivery. Given this fact, it appears that any bid for service emanating from this proceeding will be roughly limited to a five-year duration and a maximum size (per available capacity on the NBSO to MPS path) of 72 MW.

Boralex has no information regarding whether a maximum bid with these characteristics will be competitive, but wanted to make the Commission aware of this limitation.

B. Cost of Service Regulation

Without providing extended federal/state jurisdictional analysis here, we point out the generally understood division between federal regulation of wholesale power markets and state regulation of retail power markets. Given this division, any direct regulation of the wholesale power sales rates from the Boralex Projects would fall within the regulatory authority of the Federal Energy Regulatory Commission ("FERC"). Boralex Ashland and Boralex Ft. Fairfield currently sell their electric output pursuant to market-based rate tariffs on file with FERC, and FERC retains authority to review those sales to ensure that they meet the "just and reasonable" standard of the Federal Power Act. As part of its oversight of wholesale power markets, FERC will review allegations of market power and prescribe mitigation measures as necessary, although it typically welcomes voluntary measures acceptable to local parties. FERC would need to be informed of, and formally accept, any voluntary cost-of-service arrangements worked out by Boralex and other Maine parties to ensure consistency with Boralex's market-based rate tariffs and the Federal Power Act.

On April 14, 2004, FERC issued its *Order on Rehearing and Modifying Interim Generation Market Power Analysis and Mitigation Policy*.[3] This Interim Screen Order currently governs how FERC approaches potential market power issues, and how it will deal with market power when it finds it. However, on June 21, 2007, FERC adopted a new set of regulations regarding the administration of market-based rate tariffs for wholesale power producers designed to replace the Interim Screen Order.[4] The New Market Rules become effective 60 days after publication, which has not yet occurred.

Both the Interim Screen Order and the New Market Rules incorporate two initial market power screens. If a generator like Boralex passes these screens within a relevant market, it is presumed not to possess any wholesale market power. This presumption can be rebutted by the FERC or other intervenors. If a generator fails these screens or its presumption is otherwise sufficiently rebutted, the FERC can use a more detailed market power test (the "Delivered Price Test") to

[2] More information available at: http://www.nbso.ca.
[3] Docket Nos. ER96-2495-016, *et al.*, 107 FERC ¶61,108 (Apr. 14, 2004) (hereinafter, "Interim Screen Order").
[4] Order No. 697, Docket No. RM04-7-000 (June 21, 2007) (hereinafter, "New Market Rules Order").

examine the issue. If market power is ultimately found, FERC can prescribe mitigation measures.

Both the Interim Screen Order and the New Market Rules encourage a generator with market power to propose mitigation measures tailored to its specific circumstance. If those proposals are not made, or if they are deemed inadequate, FERC may impose its own measures, which include the implementation of cost-of-service "default rates":[5]

- Sales of power of one week or less: priced at generation unit's demonstrated incremental (marginal) cost of production plus 10%.

- Sales of power of more than one week and less than one year: the actual costs of the unit up to its "embedded cost" of service.

- Sales of power for more than one year: embedded cost of service basis.

The "embedded cost" of service is FERC's term for a return on both fixed and variable costs. Thus, short-term sales rates allow a return on marginal/variable costs, but no return on any fixed assets. Mid-term sales allow a generator to sell at any price they can negotiate, up to a price ceiling representing a full cost-of-service rate that includes a return on fixed assets. Finally, with longer term sales, the generator is restricted to selling at a full cost-of-service basis that includes a reasonable return on fixed assets and recovery of all prudent variable costs.

The Interim Screen Order requires affiliated generators like Boralex Ashland and Boralex Ft. Fairfield to file a report on their market positions every three years. Coincidentally, Boralex's next "triennial report" is due on or about June 29, 2007. That report will be available on the FERC's website, and Boralex will provide a copy to the Commission. Boralex's triennial report will clearly demonstrate that Boralex possesses no market power within the relevant market as defined by FERC's regulations, which is the Maritime Control Area. Interestingly, the New Market Rules create a blanket (but rebuttable) presumption that any generator controlling less than 500MW has no wholesale market power, and the rules exempt such entities from further triennial report filings. Thus, once the New Market Rules become effective, Boralex will not be required to file triennial reports in the future, and will remain subject to a rebuttable presumption that it holds no wholesale market power.

Despite the foregoing, given the Commission's concern about potential market power within the NMISA, Boralex is willing to consider interim cost-of-service arrangements based on FERC's default rates. Boralex could make those arrangements available for the Boralex Sherman plant upon prior notice sufficient to allow a plant restart, while such arrangements for Boralex Ashland and Boralex Ft. Fairfield would be available upon termination of their current power sales arrangements in February 2009. In order to commit to plant staff, plan plant maintenance and obtain fuel, any such arrangements would need to incorporate purchase commitments of a number of years, whether by local utilities or credible integrators.

[5] New Market Rules Order, at ¶151.

While any such cost-of-service arrangements would be based on FERC's methodologies, we believe that FERC would welcome assistance in considering rates for a biomass-fueled power plant, with its non-commodity fuel and somewhat unique operating characteristics. Thus, we would propose an open-book accounting approach that fully enables interested parties to understand the Boralex plant cost structure, protect Maine parties from any unreasonable affiliate arrangements, provide biomass fuel procurement oversight, and readily review maintenance and repair budgets.

We believe that this solution offers the best bridge to the completion of the transmission line.

C. Standard Offer Contractual Arrangement

Boralex has noted in previous comment requests that medium to long term standard offer products are open to substantial risk of customer migration. Such risk would likely be priced into bids.

It is also not clear to us what a "price benefit to consumers" means in this context. Does price benefit mean prices lower than southern Maine, prices lower than historical prices, prices more stable than southern Maine, or something else? Clarification of the goals of such an arrangement would aid in evaluating the efficacy of the approach.

These issues aside, Boralex is willing to work with other stakeholders to produce a framework for this type of arrangement that would attain the goal of stabilizing the region in the interim period before a transmission line is in place.

Conclusion

Boralex does not believe that its affiliates wield any wholesale market power in northern Maine. Even so, it is very difficult for Boralex's personnel to operate normally under the shadow of potential market power allegations. For that reason, Boralex stands ready to work with the Commission and other northern Maine parties in fashioning both interim and long-term solutions to their market power concerns. We can take the lead in producing detailed interim price/risk sharing proposals for each of the Boralex plants within the NMISA for consideration by all relevant parties, and in supporting any consensus outcome before FERC. We cannot take the lead on planning a new transmission line, but we can make clear the measure of our financial support for the endeavor.

We hope you find the forgoing useful, and we look forward to working with others interested in northern Maine and its electric service requirements.

ATTACHMENT E

Boralex Market Power Screens

With Remote Capacity Adjustment
Note - capacity and load amounts from Boralex Triennial Filing

Pivotal Supplier Analysis
NMISA Region Basis

		MW	
Applicant's in-region capacity	A	96.0	
Non-affiliate in-region uncommitted capacity	B	78.7	
Total import capability	C	105.0	
Applicant's importable remote capacity	**D**	**85.0**	**Boralex Stratton and Livermore Falls facilities**
Non-affiliate importable capacity	E	20.0	(C - D)
Total capacity (in-region + importable)	F	279.7	(A + B + C)
Total applicant capacity	G	181.0	(A + D)
Planned outages	H	0.0	
Peak load	I	147.0	
Applicant's plant load	J	7.0	
Applicant's other long-term firm sales	K	65.0	
Applicant's reserve requirement	L	0.0	
Applicants committed load obligation	M	72.0	(J + K + L)
Total uncommitted capacity	N	207.7	(F - M)
Total load (peak)	O	140.0	
Net uncommitted supply	P	**67.7**	(N - O)
Applicant's uncommitted capacity	Q	**109.0**	(G - M)

If Q <= P, Applicant passes
If Q > P, Applicant fails

RESULT ---->>> Applicant FAILS

Boralex Market Power Screens

With Remote Capacity Adjustment
Note - capacity and load amounts from Boralex Triennial Filing

Wholesale Market Share Analysis
NMISA Region Basis

		Q1	Q2	Q3	Q4	
		MW	MW	MW	MW	
Applicant's in-region capacity	A	96.0	96.0	96.0	96.0	
Applicant's seasonal planned outages	B	0.0	0.0	0.0	0.0	
Non-affiliate in-region uncommitted capacity	C	78.7	78.7	78.7	78.7	
Total import capability	D	105.0	105.0	105.0	105.0	
Applicant's importable remote capacity	**E**	**85.0**	**85.0**	**85.0**	**85.0**	Boralex Stratton and Livermore Falls facilities
Non-affiliate importable capacity	F	20.0	20.0	20.0	20.0	(D - E)
Total capacity (in-region + importable)	G	279.7	279.7	279.7	279.7	(A - B + C + D)
Total applicant capacity	H	181.0	181.0	181.0	181.0	(A - B + E)
Seasonal peak load	I	146.0	127.0	134.0	145.0	
Applicant's plant load	J	7.0	7.0	7.0	7.0	
Applicant's other long-term firm sales	K	65.0	65.0	65.0	65.0	
Applicant's reserve requirement	L	0.0	0.0	0.0	0.0	
Applicants committed load obligation	M	72.0	72.0	72.0	72.0	(J + K + L)
Total competing supply	N	**98.7**	**98.7**	**98.7**	**98.7**	(C + F)
Applicant's uncommitted capacity	O	**109.0**	**109.0**	**109.0**	**109.0**	(H - M)
Total uncommitted capacity	P	**207.7**	**207.7**	**207.7**	**207.7**	(N + O)
Applicant's market share	Q	**52.5%**	**52.5%**	**52.5%**	**52.5%**	(O / P)

If Applicants market share < 20% , Applicant passes
If Applicants market share >= 20% , Applicant fails

RESULT ---->>> Applicant FAILS

Boralex Market Power Screens

With Committed Capacity Adjustment
Note - capacity and load amounts from Boralex Triennial Filing

Pivotal Supplier Analysis
NMISA Region Basis

		MW	
Applicant's in-region capacity	A	96.0	
Non-affiliate in-region uncommitted capacity	B	78.7	
Total import capability	C	105.0	
Applicant's importable remote capacity	D	0.0	Boralex Stratton and Livermore Falls facilities
Non-affiliate importable capacity	E	105.0	(C - D)
Total capacity (in-region + importable)	F	279.7	(A + B + C)
Total applicant capacity	G	96.0	(A + D)
Planned outages	H	0.0	
Peak load	I	147.0	
Applicant's plant load	J	7.0	
Applicant's other long-term firm sales	**K**	**0.0**	
Applicant's reserve requirement	L	0.0	
Applicants committed load obligation	M	7.0	(J + K + L)
Total uncommitted capacity	N	272.7	(F - M)
Total load (peak)	O	140.0	
Net uncommitted supply	P	**132.7**	(N - O)
Applicant's uncommitted capacity	Q	**89.0**	(G - M)

If Q <= P, Applicant passes
If Q > P, Applicant fails

RESULT ---->>> Applicant PASSES

Boralex Market Power Screens

With Committed Capacity Adjustment
Note - capacity and load amounts from Boralex Triennial Filing

Wholesale Market Share Analysis
NMISA Region Basis

		Q1 MW	Q2 MW	Q3 MW	Q4 MW	
Applicant's in-region capacity	A	96.0	96.0	96.0	96.0	
Applicant's seasonal planned outages	B	0.0	0.0	0.0	0.0	
Non-affiliate in-region uncommitted capacity	C	78.7	78.7	78.7	78.7	
Total import capability	D	105.0	105.0	105.0	105.0	
Applicant's importable remote capacity	E	0.0	0.0	0.0	0.0	Boralex Stratton and Livermore Falls facilities
Non-affiliate importable capacity	F	105.0	105.0	105.0	105.0	(D - E)
Total capacity (in-region + importable)	G	279.7	279.7	279.7	279.7	(A - B + C + D)
Total applicant capacity	H	96.0	96.0	96.0	96.0	(A - B + E)
Seasonal peak load	I	146.0	127.0	134.0	145.0	
Applicant's plant load	J	7.0	7.0	7.0	7.0	
Applicant's other long-term firm sales	**K**	**0.0**	**0.0**	**0.0**	**0.0**	
Applicant's reserve requirement	L	0.0	0.0	0.0	0.0	
Applicants committed load obligation	M	7.0	7.0	7.0	7.0	(J + K + L)
Total competing supply	N	**183.7**	**183.7**	**183.7**	**183.7**	(C + F)
Applicant's uncommitted capacity	O	**89.0**	**89.0**	**89.0**	**89.0**	(H - M)
Total uncommitted capacity	P	**272.7**	**272.7**	**272.7**	**272.7**	(N + O)
Applicant's market share	Q	**32.6%**	**32.6%**	**32.6%**	**32.6%**	(O / P)

If Applicants market share < 20% , Applicant passes
If Applicants market share >= 20% , Applicant fails

RESULT ---->>> Applicant FAILS

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 20th day of July, 2007.

/s/ Harry A. Dupre
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